

Fast-Tracking Megaprojects: Balancing Speed, Feasibility and Dispute Risks

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In this article, the authors examine the impacts of fast-tracking infrastructure megaprojects.

Even before he took office for the second time, President Donald Trump proposed to expedite federal approvals and permits for any investments worth more than \$1 billion.¹ To date, details of Trump's current proposed fast-tracking initiative have not been articulated. If put into action, however, infrastructure megaprojects will certainly be among the investments covered by any such initiative, with such fast-tracking potentially enhancing dispute risks before projects commence and throughout the lifecycle of the project.

WORLD BANK REPORT

In late 2024, the World Bank published a report setting out its findings on drivers of delay in the planning and execution of infrastructure projects. It found that across all regions and regardless of the value of the contract, the majority of delays to infrastructure projects were attributable to the buyer or implementing entity, as opposed to external stakeholders responsible for issuing environmental or other approvals.² Among its findings was that delay in approval of permits arising from external stakeholders delayed 6% of all

of the infrastructure contracts studied and 13% of contracts for projects worth over \$100 million.³ However, the same report found that for projects worth over \$100 million, the most significant percentage of delays arose from low quality of feasibility reports, followed by weak procurement capacity of the implementing entity.⁴

Indeed, among the infrastructure projects studied, the World Bank found that in respect of delays arising out of project preparation, design issues (including changes or inaccurate/incomplete designs) and lack of feasibility and preparatory studies drove more delays than dilatory approvals and site clearances.⁵

In other words, while delays arising out of the permitting process are a concern, according to the World Bank study, other pre-project execution deficiencies drive a higher percentage of delays to infrastructure projects and the effects of such deficiencies are felt throughout the project cycle.⁶

Acceleration of any process in the develop-

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ment and construction of infrastructure - be it the permitting process or otherwise - can result in oversights and gaps leading to problems arising during construction of the project and sometimes significant litigation - both during the planning and permitting phase and during project execution. Even projects that undergo lengthy, comprehensive permitting processes in the ordinary course - processes that can span a decade or longer - result in litigation and thus, further delay. In the case of fast-tracking permitting, however, there may be an even higher risk of disputes arising from failures to properly engage with stakeholders about potential social and environmental impacts, among other things, that may delay commencement of the project or manifest in delays during project execution as gaps and oversights are discovered and challenged.

Equally important, state governments have in the past succeeded in blocking infrastructure megaprojects by withholding requisite approvals. Unless and until Congress decides to change relevant environmental statutes⁷ and states and the federal government engage in additional meaningful, coordinated process reform, accelerated issuance of federal permits may have little effect in reducing delays associated with the permitting process and, indeed, could increase them. At their essence, approval and permitting processes are designed to ensure viability and success of megaprojects. Those involved in megaprojects should pay particular attention to these steps, even if the permitting process is accelerated and therefore, possibly, less rigorous to mitigate the possibility of future disputes.

TAKEAWAYS

- *Key Takeaway #1*

Fast-Tracking Risks: Accelerated permitting processes may lead to disputes due to insufficient stakeholder engagement, design oversights, and environmental impact issues.

- *Key Takeaway #2*

Findings From the World Bank Report: Delays are more commonly driven by poor feasibility studies, weak procurement practices, and design flaws than by permitting issues alone.

- *Key Takeaway #3*

Lifecycle Implications: Gaps in early project phases can result in significant litigation during execution, even for non-expedited projects.

- *Key Takeaway #4*

Dispute Mitigation: Careful project planning, robust design processes, and proactive stakeholder engagement remain critical to minimizing disputes.

NOTES:

¹Donald J. Trump (2024) Truth Social, December 2024. Available at <https://truthsocial.com/@realDonaldTrump/posts/113630131209113398> (last visited 13 January 2025).

²World Bank. Drivers of Delays in Procurement of Infrastructure Projects (English), Washington, D.C.: World Bank Group (31 October 2024), at p.29, <http://documents.worldbank.org/curated/en/099062824153516589/P173110138cdf70ef18cd21fb78946336ef> (last visited 13 Jan. 2025).

³World Bank. Drivers of Delays in Procurement of Infrastructure Projects (English), Washington, D.C.: World Bank Group (31 October 2024), at Table 5.3 at p. 29, <http://documents.worldbank.org/curated/en/099062824153516589/P173110138cdf70ef18cd21fb78946336ef> (last visited 13 Jan. 2025).

⁴World Bank. Drivers of Delays in Procurement of Infrastructure Projects (English), Washington, D.C.: World Bank Group (31 October 2024), at p.27, <http://documents.worldbank.org/curated/en/>

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[099062824153516589/P173110138cdf70ef18cd21fb78946336ef](http://documents.worldbank.org/curated/en/099062824153516589/P173110138cdf70ef18cd21fb78946336ef) (last visited 13 Jan. 2025).

⁵World Bank. Drivers of Delays in Procurement of Infrastructure Projects (English), Washington, D.C.: World Bank Group (31 October 2024), at Table 5.12 at p. 33, <http://documents.worldbank.org/curated/en/099062824153516589/P173110138cdf70ef18cd21fb78946336ef> (last visited 13 Jan. 2025).

⁶World Bank. Drivers of Delays in Procurement of Infrastructure Projects (English), Washington, D.C.:

World Bank Group (31 October 2024), at pp. 38–39, <http://documents.worldbank.org/curated/en/099062824153516589/P173110138cdf70ef18cd21fb78946336ef> (last visited 13 Jan. 25 2025).

⁷Needless to say, Congress' amendment of federal environmental and land use laws may not impact states' ability to delay or withhold the issuance of permits and approvals needed for infrastructure projects under state laws.